

[REPORTED WITHOUT AMENDMENT]

92D CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
1st Session } No. 92-496

AMENDING TITLE 10, UNITED STATES CODE, TO LIMIT THE SEPARATION OF MEMBERS OF THE ARMED FORCES UNDER CONDITIONS OTHER THAN HONORABLE, AND FOR OTHER PURPOSES

SEPTEMBER 22, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BENNETT, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany H.R. 10422]

The Committee on Armed Services, to whom was referred the bill (H.R. 10422) to amend title 10, United States Code, to limit the separation of members of the Armed Forces under conditions other than honorable, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to prescribe the circumstances in which a member of an armed force, either enlisted, commissioned or warrant officer, may be administratively separated therefrom under other than honorable conditions, and to assure that certain basic rights be extended to members who are subjected to such administrative action.

With the exception of certain statutory provisions set forth in several chapters of title 10, United States Code, pertaining to the administrative elimination of officers of the Army and Air Force, the procedures and rights governing the administrative elimination of members of the Armed Forces under other than honorable conditions are governed entirely by regulation. The bill establishes, with the status of Federal law, uniform authority, criteria, procedures and rights governing the administrative elimination under other than honorable conditions of enlisted and officer personnel of the Army, Navy, Marine Corps, Air Force and Coast Guard. Heretofore, neither statutory authority for nor procedures or criteria governing the administrative elimination of Naval and Marine Corps officers under other than honorable conditions has existed.

The bill creates a new chapter in title 10, chapter 60, which places all the statutory authority and procedures governing the administrative elimination of commissioned and warrant officers of the Army, Navy, Marine Corps, and Air Force in one chapter in title 10.

BACKGROUND

Over the years many Members of Congress, various congressional committees, and bar associations have been concerned over repeated complaints about the administrative discharge practices in the services—with particular reference to the separation of enlisted personnel. This has been particularly evident since the enactment of the Uniform Code of Military Justice. Recently there has been an added emphasis on administrative separations as a substitute for punitive action, and cases have been reported alleging that undesirable discharges were awarded under procedures that lacked the fundamental protections of administrative due process.

There have been improvements over the years, but these improvements have been administrative in nature and not subject to the strict compliance requirements inherent in our statutes. The Committee has no doubt of the serious consequences of discharges under conditions other than honorable and of the absolute need for statutory regulation in that area. Indeed, a judge on the Court of Military Appeals has said that, generally, one may be better off with a bad conduct discharge than an undesirable discharge, since the latter is "very severe."

So far as is possible in the legislative process, this proposal is designed to cure those problems by prescribing the circumstances under which a member of an armed force may be separated administratively under other than honorable conditions. The proposal is addressed to procedures under which an administrative discharge under other than honorable conditions may be awarded, but does not change the substantive criminal law, its definitions or sanctions.

General Provisions

The proposed legislation provides that a member of an armed force can be separated under other than honorable conditions only as the result of:

- (1) an approved recommendation of a board of officers based upon the preponderance of the evidence of record, of misconduct (in the case of enlisted members), of misconduct or moral or professional dereliction (in the case of officers, cadets and midshipmen) or a finding that the member's retention would not be clearly consistent with the interests of national security;
- (2) resignation or request for a discharge in lieu of the board action mentioned in (1) above, or in lieu of trial by court-martial;
- (3) absence without authority for one year;
- (4) final conviction by a civilian court or adjudication as a juvenile offender, for an offense for which under the Uniform Code of Military Justice the punishment is death or imprisonment for more than one year;
- (5) an aggregate of three separate final convictions during a three-year period by separate court-martial, or civilian courts, or both, for offenses which under the Uniform Code of Military

Justice the punishment is confinement for three months or more;
and

(6) in time of war by order of the President.

Hearing Board Procedures

The board procedures under this proposed legislation are substantially quasi-judicial in nature. For example, all parties have an equal opportunity to obtain witnesses and other evidence. The boards have the power to issue subpoenas to compel the attendance of witnesses, as well as the production of evidence co-extensive with the powers accorded courts-martial. This would be the first instance where power to issue subpoenas is vested in military boards and would offer a significant remedy for many of the complaints concerning board actions on discharge cases. The respondent is guaranteed the right to have reasonable notice of the hearing, to appear before the board and present evidence, to be represented by legal counsel, to confront witnesses against him and to examine the evidence presented against him. Finally, a military judge is designated as a nonvoting member of the board to rule on interlocutory questions.

Rules of Evidence

There is a provision in the proposal for formulating uniform rules of evidence including rules as to the taking or use of depositions and ex parte statements. To insure that the committee is satisfied with these rules, there is included a provision requiring that the rules shall be reported to Congress.

Appellate Process

Also provided is an appellate procedure through a review board composed of military judges. The review board is not a trier of fact but does review for sufficiency in law based upon a verbatim record of the proceedings of the hearing board.

Officer Cases

There is a new chapter 60 in title 10, United States Code, which addresses itself to the administrative elimination of officers. In the areas of misconduct, moral or professional dereliction or questions involving the national security, an officer may not be eliminated under conditions other than honorable unless he is afforded all of the procedural rights discussed above. In addition, this action has codified procedures governing the elimination of regular officers of the Army, Navy, Marine Corps and Air Force under one chapter rather than under two chapters which is currently the case. For the first time, the proposed statutory codification includes Navy and Marine Corps officers. Heretofore they were governed by administrative regulations only. In effect, the old "show cause" provisions for eliminating an officer where either misconduct, moral or professional dereliction, or security is involved are repealed and the burden of proof is placed on the government, where it rightfully belongs.

The Clean Bill

The legislation was originally referred to Subcommittee No. 3 of the House Armed Services Committee as H.R. 523. Several technical amendments were incorporated into the legislation by the Subcommit-

tee and in final form a clean bill was introduced as H.R. 10422 with full Subcommittee cosponsorship.

COMMITTEE POSITION

The Committee on Armed Services, a quorum being present, unanimously recommends enactment of H.R. 10422.

COST

The Department of Defense was unable to estimate the cost of the proposed legislation but states that any costs resulting from the bill will not increase overall budget requirements.

DEPARTMENTAL POSITION

The Department of Defense favored the proposed legislation originally introduced and recommended technical and substantive changes incorporated in the substitute bill. The resulting clean bill has the approval of the Department of Defense. The Office of Management and Budget offered no objection. The Department of Defense report is set out below.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., March 8, 1971.

HON. F. EDWARD HÉBERT,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on H.R. 523, 92d Congress, a bill "To amend title 10, United States Code, to limit the separation of members of the armed forces under conditions other than honorable and for other purposes."

The purpose of the bill is to prescribe the circumstances in which a member of an Armed Force may be administratively separated therefrom under other than honorable conditions, and to enumerate certain basic rights to be extended to members who are subjected to such an administrative action. The Department of Defense favors the objectives of the bill. However, various technical and substantive changes are recommended and will be discussed below in connection with the proposed substitute bill.

Administrative elimination procedures are now governed almost wholly by regulation. As the result of Department of Defense Directive 1332.14, December 20, 1965, certain basic rights were extended to enlisted members of all services in the event of their elimination under other than honorable conditions. The absence of statutory authority, however, precluded the extension of certain rights, such as confrontation of witnesses, although this right was guaranteed insofar as possible. The bill permits extension of the right to confrontation by empowering boards of officers to compel the attendance of witnesses. The bill also enumerates the basic rights now guaranteed in military regula-

tions dealing with administrative elimination under other than honorable conditions, and elevates them to the status of Federal law. In addition, the power of the Armed Forces to eliminate members under other than honorable conditions without board action is expanded, and the archaic provisions of law governing dropping of officers from the rolls for certain reasons are eliminated and supplanted by administrative discharge procedures provided in the bill.

Chapters 360 and 860 of title 10, United States Code, dealing with the separation of Regular Army and Regular Air Force officers for moral or professional dereliction, are amended to ensure that the rights guaranteed by section 1 of the bill apply with equal force to these statutory separation procedures. Substantially equal treatment for all members of the Armed Forces is thus provided.

The following changes to the bill are recommended in the interest of clarity and completeness:

a. Proposed section 1161(a) (2) of the bill should be changed by deleting the term "moral turpitude," since the nature of crimes involving moral turpitude varies widely among the States. The deleted term should be replaced by language which refers to acts punishable under the authority of chapter 47 of title 10. This broader language will facilitate administration and will insure uniformity.

b. Proposed section 1161(a) (3) of the bill should be changed to ensure that the three convictions must be adjudged by three separate courts-martial. This provision should also be expanded to include convictions by civil courts, as many minor offenses formerly cognizable by court-martial may now be tried only by civilian courts pursuant to the Supreme Court decision of *O'Callahan v. Parker*, 395 U.S. 258, 1969.

c. Proposed section 1161(a) (4) of the bill should be changed by deleting the words "based on preponderance of the evidence of record" and substituting therefor the words "based on substantial evidence of record." The requirement of "preponderance of the evidence" as a standard of proof is a higher standard than is necessary for according due process in administrative proceedings of this nature. The "Substantial evidence" standard of proof has been judicially sanctioned for use in administrative proceedings (*Brown v. Gamage*, 377 F. 2d 154, D.C. Cir., 1967, Cert. Den. 389 U.S. 585; *Schlegel v. U.S. Ct. Cl.* No. 369-63, decided October 17, 1969), and is incidentally less burdensome.

The section should also be changed by placing the substituted words after the word "finding."

d. Proposed section 1161(a) of the bill should be modified by adding an additional subsection "(6)" to read:

"(6) in time of war, by order of the President."

At present, the proposed bill would repeal the present 10 U.S.C. 1161(a) (3) that gives the President the power to dismiss a commissioned officer in time of war. It is believed that this authority should be retained in the law and expanded to cover all members of the Armed Forces. Although the authority would not be exercised except in the most exceptional circumstances, express Congressional recognition of the President's power to summarily separate a member of the Armed Forces during war time is potentially useful and should be retained.

e. Proposed section 1161(b) of the bill should be changed by deleting the words "which, so far as they consider practicable, apply the rules of evidence generally employed in the trial of cases in the courts of the United States."

It is believed that a statutory requirement that the rules of evidence be, insofar as practicable, those applied in the Federal courts could invite collateral attack on administrative discharge proceedings on the grounds that the Department of Defense abused its discretion in determining which of the Federal Rules to follow or not follow, as the case might be, in the implementation of the statute. Limiting the statutory requirement to the "formulation of rules of evidence" without reference to Federal Rules would obviate the aforementioned problem and would suffice for the statutory language as it is anticipated that in developing Department of Defense implementation of H.R. 523 the rules of evidence prescribed in the Federal Rules of Civil Procedure and in the Manual for Courts-Martial will be used as a guide.

The proposed section should also be changed by inserting "including rules as to the taking and use of depositions and ex parte statements," after the words "uniform rules of evidence." This addition will ensure that this type of evidence will be admissible before boards of officers.

f. Proposed section 1161(c) of the bill should be modified in accordance with the following:

(1) At present, the proposed section accords a greater right to counsel than that to which a defendant is entitled before a non-Bad Conduct Discharge Special Court-Martial. In accordance with the Military Justice Act of 1968 (Act of October 24, 1968, Public Law 90-632; 82 Stat. 1335), entitlement to legally qualified counsel before a board of officers should be dependent upon his being obtainable.

(2) In view of the requirement that the board follow uniform rules of evidence, including rules as to the taking and use of depositions and ex parte statements, it is believed that a legally trained officer should be made a non-voting member of the board and should be empowered to rule with finality on interlocutory procedural and evidentiary questions.

(3) Authority is needed to permit the taking of depositions and statements outside the presence of the accused in cases in which the accused, by his own act, is unavailable for appearance before a board of officers, because he is confined in a civilian jail or penal institution at the time of the hearing or taking of the deposition. A situation presenting this problem could arise in cases wherein the member is incarcerated in a civilian penal institution after being sentenced to a term in prison in excess of one year for a crime punishable under the Uniform Code of Military Justice by confinement for less than one year.

In such a case, the member could be separated under other than honorable conditions only by board action pursuant to proposed section 1161(a) (4) of the bill but, due to his incarceration, would be unable to appear at the hearing.

g. Proposed section 1161(d) of the bill should be clarified by ensuring that the review is accomplished by legally trained personnel who are senior to the respondent except in cases where use of junior personnel cannot be avoided (as where the member being separated outranks all members of the Judge Advocate General's Corps of the service concerned). Furthermore, the review board should have the power to consider briefs and arguments of counsel based upon the record of proceedings as well as the proceedings themselves. In this regard, the record of proceedings should, for the purposes of appeal only, be a verbatim transcript of the proceedings. Action of the review board with respect to matters of law should be final. Finally, the review board should have the power to recommend mitigation of adverse recommendations.

h. Proposed section 1161(e) should be changed by inserting the words "convened under this section solely" before the words "for conduct" to ensure that the double jeopardy provision contained therein is applicable only to board proceedings held under proposed section 1161(a) (4) and not to other boards (such as flying evaluation boards).

i. The amendments to section 1163 of title 10, United States Code, contained in section 1(3) of the bill should be changed to delete the references in subsections (a) and (c) of section 1163 to subsection (b), which is repealed by the bill.

j. Section 2(1) should be changed by deleting the words "in violation of" and substituting the words "for which he is considered for separation under" therefor.

k. Section 2(2) (b) of the bill should be changed to ensure that the review of cases involving officers of the Regular Army and the Regular Air Force is equal to that afforded Reserves and enlisted members. Under H.R. 523 Reserves and enlisted members can appeal their cases to a review board convened under proposed section 1161 which, as that board would review only questions of law, would presumably be composed of legally trained personnel, but cases involving officers of the Regular Army and Regular Air Force would be reviewed by general officers who presumably would not have legal training.

l. Section 3 of the bill should be deleted. Section 5864 of title 10, United States Code provides for the discharge of officers found not morally qualified for promotion. This section, included in chapter 547 of title 10, "Examination for Promotion," is part of the selection process in the naval service. This process does not compare to the "show cause" procedures applicable to the Army, Air Force, and Coast Guard. Additionally, the Navy is developing a separate legislative proposal to provide the Navy with authority to conduct elimination proceedings for officers similar to the Army and Air Force show cause proceedings.

It should be noted that, while the bill prescribes the conditions on which a discharge under other than honorable conditions is authorized, it does not require that such a discharge be issued even though the conditions for such a discharge are met. This is consistent with current Department of Defense policy that personnel may be administratively separated with an honorable discharge although grounds exist for a less than honorable separation. Additionally, administrative

separations under other than honorable conditions do not include punitive discharges, namely Dishonorable and Bad Conduct Discharges which by statute may be issued only when adjusted by sentence of court-martial.

Addition of a provision delaying the effective date of the Act for six months would be desirable so as to allow for implementation.

The Department of Defense believes the enactment of legislation embodying the concepts of H.R. 523 will result in improvements in administrative discharge procedures while not materially restricting the use of these procedures. It is recommended that the substitute bill submitted herewith, incorporating the concepts of H.R. 523 and the technical and substantive changes outlined above, be favorably considered.*

The increased requirements for judge advocates that would result from enactment of the bill would cause an increase in budgetary requirements of the Department of Defense. The extent of this increase cannot presently be estimated.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

J. FRED BUZHARDT.

Enclosures.

At a later date, the Department of Defense recommended codification of current procedures for administrative elimination of regular officers, including officers of the Navy and Marine Corps, who, currently, are not subject to the statutory provisions for separation. That recommendation would repeal chapters 359, 360, 859 and 860 of Title 10 which contain the existing statutory provisions regarding Army and Air Force regular officer separations, and would be in a new chapter 60, Title 10, United States Code.

SECTIONAL ANALYSIS

Section 1 of the bill expressly limits the circumstances in which administrative separations under other than honorable conditions may be effected. In doing so it also expands the authority of the Armed Forces to eliminate members under other than honorable conditions without board action. The Section also enumerates certain basic rights which are guaranteed to persons subjected to administrative separation action, including a right to appeal. The Section also establishes the procedures for appellate review of separation proceedings. Additionally, the Section consolidates into a single new chapter provisions governing the separation of regular officers of the Army, Navy, Marine Corps and Air Force. The Section also ensures that a commissioned or warrant officer of an Armed Force, other than a regular component of that Armed Force, is entitled to the safeguards provided for regular officers when he is being considered for separation from active duty because of misconduct, moral or professional dereliction or for reasons of national security.

* (See Hearings, H.A.S.C. 92-23, at pp. 5846.)

Clause (1) (A) of the bill amends Chapter 59 of title 10, United States Code, by amending Section 1161 of title 10, United States Code, to provide as follows:

Section 1161(a).—A member of an Armed Force can be separated from that Armed Force under other than honorable conditions only as a result of (1) an approved recommendation of a board of officers upon a finding based on preponderance of the evidence of record, of misconduct (in the case of enlisted members), or of misconduct or moral or professional dereliction (in the case of officers, cadets, and midshipmen), or that the member's retention would not be clearly consistent with the interests of national security, (2) resignation or request for discharge in lieu of board action under this Section or trial by court-martial, (3) absence without authority for one year, (4) final conviction by a civilian court, or adjudication as a juvenile offender, for an offense the punishment for which under Chapter 47 of title 10, United States Code is death or imprisonment for more than one year, (5) an aggregate of three separate final convictions during a three-year period (the three-year period next preceding the date of conviction of the last offense) by separate courts-martial, or civilian courts, or both, of offenses the punishment for each of which under Chapter 47 of title 10, United States Code, is confinement for three months or more, or (6) in time of war, by order of the President.

With regard to subsection (1) above, the term "misconduct" means the conduct currently specified in Military Department regulations warranting administrative elimination with an other than honorable discharge.

With regard to subsection (5) above, it is specifically intended that "three separate final convictions" means final convictions by three separate trials. Each trial may constitute only *one* conviction regardless of the number of separate "charges" or "counts" tried and for which an accused or defendant is found guilty within a single trial.

Section 1161(b).—Gives boards of officers appointed under Section 1161(a) (1) and members equal opportunity to obtain witnesses and other evidence and gives the boards the power to issue process to compel the attendance of witnesses and production of evidence co-extensive with the power accorded courts-martial.

It also requires uniform rules of evidence, including rules as to the taking and use of depositions, use of ex parte statements, and that the uniform rules shall be reported to the Congress.

Section 1161(c).—Guarantees members the following rights before boards of officers: (1) right to appear before the board and present evidence; (2) right to legal counsel; (3) right to confront witnesses; (4) right to examine evidence against him.

Member's right to appear before board is limited only when he is confined in a civilian jail or penal institution. In such cases the board hearing may be conducted out of his presence if he is represented by qualified legal counsel.

Additionally, if legal counsel cannot be obtained because of physical conditions or military exigencies, the board proceedings may be held, but separation under other than honorable conditions may not be recommended or approved.

Also, there is a right to reasonable notice.

Section 1161(d).—Makes a military judge a nonvoting member of the board and empowers him to finally rule on all interlocutory questions. As with legal counsel, if the military judge cannot be obtained because of physical conditions or military exigencies, the board proceedings may be held, but separation under other than honorable conditions may not be recommended or approved.

Section 1161(e).—Gives members a right to appeal a board recommendation of separation under other than honorable conditions to a review board composed of military judges. However, it is intended that only an other than honorable discharge that is not mitigated before an appeal is taken may be appealed to a review board. The review board determines whether the board proceedings were correct in law. The review board is not a trier of fact. The review board has the power to direct a rehearing. The Section also requires that such legal review be based on a verbatim transcript of the hearing board proceedings.

Section 1161(f).—Precludes subsequent separation proceedings based solely on conduct which was the subject of previous proceedings which resulted in the member's retention.

Section 1161(g).—Specifically limits the separation of members under other than honorable conditions to: the provisions of 1161(a); the Uniform Code of Military Justice; the new Chapter 60 of title 10, United States Code created by the bill which deals with officer eliminations.

Section 1161(h).—Ensures that reserve commissioned or warrant officers and any other commissioned or warrant officers not in a regular component of an Armed Force are entitled to the same safeguards provided for regular officers when they are being considered for separation from active duty because of misconduct, moral or professional dereliction, or in the interests of national security.

Clause (1) (B) of Section 1.—Amends Section 1163 of title 10, United States Code, pertaining to limitations on separation of Reserve component members, by restating it to delete the limiting reference therein to dismissal of officers under Section 1161(a). The effect is to render reserve component officers subject to separation provisions set forth in Section 1163 of title 10. The Section also repeals subsection (b) of Section 1163 which deals with dropping officers from the rolls.

Clauses (2) and (3).—Create a new chapter in title 10, United States Code, "60. Separation of Regular Officers for Various Reasons," which combines in one chapter procedures governing the administrative elimination of Regular officers of the Army, Navy, Marine Corps, and Air Force for substandard performance of duty, and, for misconduct, moral or professional dereliction or in the interests of national security. Although substandard performance of duty results in separation under *honorable conditions*, its inclusion within this new chapter consolidates the law regarding separation of Regular officers in one place.

Section 1181, Chapter 60.—Provides authority for the Secretary concerned to appoint boards of officers to determine whether a regular commissioned or warrant officer of the Army, Navy, Marine Corps, or Air Force should be separated from the service for performance of

duty that has fallen below standards. Under current provisions of title 10, these are called "Selection Boards." The provisions include the Navy and Marine Corps who currently have no such authority.

Section 1182, Chapter 60.—Provides authority for the Secretary concerned to appoint boards (currently called Selection Boards) to determine whether a regular commissioned or warrant officer of the Army, Navy, Marine Corps, or Air Force should be separated from the service for misconduct, moral or professional dereliction or for reasons involving national security. The amended language of 1182 makes it clear that the burden of proof now rests with the Armed Force rather than the member, and that the member is no longer required to show cause for retention.

The provisions include the Navy and Marine Corps who currently have no such authority.

Section 1183, Chapter 60.—Constitutes authority to convene boards of officers, called Boards of Inquiry, to hear substandards performance cases and to forward records of its proceedings, after a fair and impartial hearing, to a board of review. This Section also provides for the membership of Boards of Inquiry.

Section 1184(a), Chapter 60.—Provides that Boards of Review will review the records of all proceedings forwarded by the Boards of Inquiry under Section 1183 above. If a Board of Review agrees with the recommendation of the Board of Inquiry, the record will be forwarded to the Secretary concerned for appropriate action.

Section 1184(b), Chapter 60.—Provides that Boards of Review convened in accordance with Section 1161(e) shall review the proceedings of a board of officers convened under Section 1161(a)(1) (misconduct, moral or professional dereliction or for reasons of national security). The review board sends its recommendation to the Secretary of the Military Department concerned for his action.

Section 1185, Chapter 60.—Authorizes the Secretary concerned to remove an officer if removal is recommended by a Board of Review. The Secretary's action in such a case is final.

Section 1186, Chapter 60.—Contains certain rules safeguarding the rights of the officer concerned before Boards of Inquiry as follows:

- (1) Written notification is required.
- (2) Reasonable time for preparation of a defense is guaranteed.
- (3) Right to appear in person and by counsel.
- (4) Allowed full access to records relevant to the case at all stages of the proceedings.

Section 1187, Chapter 60.—Contains the requirement that at any time before the removal of an officer under these proceedings, the Secretary concerned may grant his request for voluntary retirement, if eligible, or discharge the officer with severance pay.

Section 1188, Chapter 60.—Contains the eligibility for officers serving on boards under this Chapter as follows:

- (1) Officers must, with respect to Army and Air Force, hold a regular or temporary grade above lieutenant colonel, and be senior in regular grade to, and outrank, any officer considered by that board, and, with respect to the Navy and Marine Corps, be serving in a grade above commander in the Navy or lieutenant

colonel in the Marine Corps, and be senior in grade to any officer considered by that board.

(2) No officer may be a member of more than one board convened under this Chapter for the same officer.

Nothing contained in this Section is intended to preclude a requirement by a Military Department that boards be composed of general officers.

Clauses (4), (5), (6), and (7) repeal Chapters 359, 360, 859 and 860 of title 10. These contain the current statutory provisions regarding Army and Air Force separations.

Section 2 ensures that commissioned and warrant officers of the Coast Guard are entitled to the same safeguards provided for commissioned and warrant officers of the other Services when they are being considered for separation from active duty because of misconduct, moral or professional dereliction, or in the interests of national security.

Section 3 establishes the effective date of the Act to be the first day of the sixth month following the month in which it is enacted. This allows sufficient time for the development and publication of implementing regulations.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, there is herewith printed in parallel columns the text of provisions of existing law which would be repealed or amended by the various provisions of the bill as reported.

EXISTING LAW

TITLE 10, UNITED STATES CODE

Chapter 59.—SEPARATION

Sec.

- 1161. Commissioned officers: limitations on dismissal.
- 1162. Reserves: discharge.
- 1163. Reserve components: members; limitations on separation.
- 1164. Warrant officers: separation for age.
- 1165. Regular warrant officers: separation during three-year probationary period.
- 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
- 1167. Regular warrant officers: severance pay.
- 1168. Discharge or release from active duty: limitations.
- 1169. Regular enlisted members: limitations on discharge.
- 1170. Regular enlisted members: minority discharge.
- 1171. Regular enlisted members: early discharge.
- 1172. Enlisted members: during war or emergency; discharge.

§ 1161. Commissioned officers: limitations on dismissal.

(a) No commissioned officer may be dismissed from any armed force except—

- (1) by sentence of a general court-martial;
- (2) in commutation of a sentence of a general court-martial; or
- (3) in time of war, by order of the President.

THE BILL AS REPORTED

H.R. 10422

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 10, United States Code, is amended as follows:

(1) Chapter 59 is amended as follows:

(A) Section 1161 is amended to read as follows, and the analysis item for that section is amended to correspond with the revised catchline:

“§ 1161. Members: limitations on separation under other than honorable conditions

“(a) Under regulations prescribed by the Secretary concerned, a member of an armed force may be separated under other than honorable conditions from an armed force as a result of—

“(1) an approved recommendation of a board of officers upon a finding based on preponderance of the evidence of record, of misconduct (in the case of enlisted members), or of misconduct or moral or professional dereliction (in the case of officers, cadets, and midshipmen), or that the member's retention

EXISTING LAW

(b) The President may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

* * * * *

THE BILL AS REPORTED

would not be clearly consistent with the interests of national security;

"(2) resignation or request for discharge in lieu of board action under clause (1) or trial by court-martial, submitted after an opportunity to consult counsel having the professional qualifications prescribed by section 827(b) of this title;

"(3) absence without authority for one year;

"(4) final conviction by a civilian court, or adjudication as a juvenile offender, for an offense the punishment for which under chapter 47 of this title is death or imprisonment for more than one year;

"(5) an aggregate of three separate final convictions during a three-year period (the three-year period next preceding the date of conviction of the last offense) by separate courts-martial, or civilian courts, or both, of offenses the punishment for each of which under chapter 47 of this title is confinement for three months or more; or

"(6) in time of war, by order of the President.

"(b) Under regulations prescribed by the Secretaries concerned, which shall be uniform for all of the armed forces—

"(1) the board of officers appointed under subsection (a) (1), and the member, shall have equal opportunity to obtain witnesses and other evidence; and

"(2) the board shall have power to issue process to compel the attendance of witnesses and production

of evidence coextensive with the power accorded courts-martial under section 846 of this title.

The Secretaries concerned shall prescribe rules of evidence, including rules as to the taking and use of depositions and ex parte statements, which shall be uniform for all of the armed forces, and shall be reported to the Congress.

“(c) Under regulations prescribed by the Secretary concerned, a board of officers appointed under subsection (a) (1) is required to conduct a hearing which affords the member concerned an opportunity to—

“(1) appear before the board and present evidence in his own behalf;

“(2) be represented by counsel having the professional qualifications prescribed by section 827(b) of this title, unless counsel having those qualifications cannot be obtained because of physical conditions or military exigencies, and if such counsel cannot be obtained because of physical conditions or military exigencies, the board proceedings may be held, but separation under other than honorable conditions may not be recommended or approved;

“(3) subject to exceptions prescribed in the rules of evidence, confront the witnesses against him; and

“(4) examine the documentary and real evidence against him.

The member shall be notified in writing reasonably in advance of the proposed hearing and of the reasons therefor. If the member is confined in a civilian jail or penal institution at the time of the hearing, and he is represented by counsel qualified under section 827(b) of this title, it may be conducted out of his presence.

EXISTING LAW

THE BILL AS REPORTED

“(d) Except where he cannot be obtained on account of physical conditions or military exigencies, one nonvoting member of the board prescribed under subsection (a)(1) who has the professional qualifications prescribed by section 826(b) of this title shall act as legal advisor and rule on all interlocutory questions which rulings shall be final, and if such legal advisor cannot be obtained because of physical conditions or military exigencies, the board proceedings may be held but separation under other than honorable conditions may not be recommended or approved.

“(e) Under regulations prescribed by the Secretary concerned, the recommendation of a board of officers appointed under section (a)(1) for separation under other than honorable conditions may be appealed by the member to a review board established by The Judge Advocate General concerned, or the General Counsel of the Department of Transportation, as appropriate. Each review board shall be composed of not less than three officers having the professional qualifications prescribed by section 826(b) of this title and, unless it cannot be avoided, each such officer shall be senior to, and outrank, the member. The review board shall determine whether the proceedings before the board of officers appointed under subsection (a)(1) is correct in law and may direct a rehearing. The review board is limited in its consideration to—

“(1) the record of proceedings of the board of officers which, in cases of appeal only, must be a verbatim record; and

“(2) written arguments of counsel based upon those proceedings.

A review board may not recommend that the member be separated under conditions less favorable than those recommended by the board of officers, but it may recommend mitigation of adverse board recommendations. The action of the review board is final with respect to matters of law. With respect to other matters, the action of the review board is advisory in nature with the final decision, except as to matters of law, being exercised by the authority empowered to separate the member. An officer whose case is reviewable under section 1184(p) of this title, or section 323 of title 14, is not entitled to an appeal under this section.

“(f) Except where the findings or recommendations of a board of officers are determined to have been obtained by fraud or collusion, a member who has been retained as a result of proceedings under this section may not be required to appear before another board of officers convened under this section solely for conduct which was the subject of the previous proceedings.

“(g) Except as provided in this chapter, chapter 47, and chapter 60 of this title, or chapter 11 of title 14, a member may not be separated from an armed force under conditions other than honorable.

“(h) Notwithstanding any other provision of law, a commissioned or warrant officer of an armed force, other

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§ 1163. Reserve components: members; limitations on separation.

(a) An officer of a reserve component who has at least three years of service as a commissioned officer may not be separated from that component without his consent except under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned, or by the approved sentence of a court-martial. This subsection does not apply to a separation under subsection (b) of this section or under section 1003 of this title, to a dismissal under section 1161(a) of this title, or to a transfer under section 3352 or 8352 of this title.

(b) The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve (1) who has been absent without authority for at least three months, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court

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than a regular component of that armed force, is entitled to the safeguards provided for regular officers under section 1182 of title 10 whenever he is being considered for separation from active duty because of misconduct, moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security."

(B) Section 1163 is amended—

(i) by amending the second sentence of subsection (a) to read as follows: "This subsection does not apply to a separation under section 1003, or a transfer under section 3352 or 8352, of this title.";

(ii) by repealing subsection (b); and

(iii) by striking out "except under subsection (b)," in subsection (c).

other than a court-martial or other military court, and whose sentence has become final.

(c) A member of a reserve component who is separated therefrom for cause, except under subsection (b), is entitled to a discharge under honorable conditions unless—

(1) he is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) he consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

(d) Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system, may not be involuntarily released from that duty before he becomes eligible for that pay, unless his release is approved by the Secretary.

EXISTING LAW

Subtitle A.—General Military Law

PART I.—ORGANIZATION AND GENERAL MILITARY POWERS

* * * * *

PART II.—PERSONNEL

Chap.	Sec.
31. Enlistments	501
33. Appointments in Regular Components	541
35. Appointments as Reserve Officers	591
37. General Service Requirements	651
39. Active Duty	671
40. Leave	701
41. Special Appointments, Assignments, Details, and Duties	711
43. Rank and Command	741
45. The Uniform	771
47. Uniform Code of Military Justice	801
48. Military Correctional Facilities	951
49. Miscellaneous Prohibitions and Penalties	971
51. Retention of Reserves	1001
53. Miscellaneous Rights and Benefits	1031
55. Medical and Dental Care	1071
57. Decorations and Awards	1121
59. Separation	1161
61. Retirement or Separation for Physical Disability	1201
63. Retirement for Age	1255
65. Retirement for Length of Service	1293
67. Retired Pay for Non-Regular Service	1331
69. Retired Grade	1371
71. Computation of Retired Pay	1401
73. Retired Servicemen's Family Protection Plan	1431
75. Death Benefits	1475

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(2) The chapter analysis of subtitle A and the chapter analysis of part II of subtitle A are each amended by inserting the following new item:

"60. Separation of Regular Officers for various reasons"

77. Posthumous Commissions and Warrants.....	1521
79. Correction of Military Records.....	1551
81. Civilian Employees.....	1581

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PART II.—PERSONNEL

Chap.	Sec.
31. Enlistments	501
33. Appointments in Regular Components.....	541
35. Appointments as Reserve Officers.....	591
37. General Service Requirements.....	651
39. Active Duty.....	671
40. Leave	701
41. Special Appointments, Assignments, Details, and Duties.....	711
43. Rank and Command.....	741
45. The Uniform.....	771
47. Uniform Code of Military Justice.....	801
48. Military Correctional Facilities.....	951
49. Miscellaneous Prohibitions and Penalties.....	971
51. Retention of Reserves.....	1001
53. Miscellaneous Rights and Benefits.....	1031
55. Medical and Dental Care.....	1071
57. Decorations and Awards.....	1121
59. Separation	1161
61. Retirement or Separation for Physical Disability.....	1201
63. Retirement for Age.....	1255
65. Retirement for Length of Service.....	1293
67. Retired Pay for Non-Regular Service.....	1331
69. Retired Grade.....	1371
71. Computation of Retired Pay.....	1401
73. Retired Servicemen's Family Protection Plan.....	1431
75. Death Benefits.....	1475
77. Posthumous Commissions and Warrants.....	1521
79. Correction of Military Records.....	1551
81. Civilian Employees.....	1581

(3) Part II of subtitle A is amended by inserting the following new chapter after chapter 59:

**“Chapter 60.—SEPARATION OF REGULAR
OFFICERS FOR VARIOUS REASONS**

“Sec.

“1181. Board of officers: substandard performance of duty; authority to convene.

“1182. Boards of officers: other than substandard performance of duty; authority to convene.

“1183. Boards of inquiry: composition; duties.

“1184. Boards of review: composition; duties.

“1185. Removal of officer: action by Secretary upon recommendation.

“1186. Rights and procedures.

“1187. Officers considered for removal: voluntary retirement or discharge; severance benefits.

“1188. Officers eligible to serve on boards.

**“§ 1181. Boards of officers: substandard performance
of duty; authority to convene**

“The Secretary of the military department concerned may at any time convene a board of officers to review the record of any commissioned or warrant officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, as the case may be, to determine whether he shall be required, because his performance of duty has fallen below standards prescribed by the Secretary, to show cause for his retention on active duty.

“§ 1182. Boards of officers: other than substandard performance of duty; authority to convene

“The Secretary of the military department concerned may at any time convene a board of officers to review the record of any commissioned or warrant officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, as the case may be, to determine whether action should be taken in accordance with section 1161 of this title to remove him from active duty because of misconduct, moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security.

“§ 1183. Boards of inquiry: composition; duties

“(a) Boards of inquiry, each composed of three or more officers, shall be convened, at such places as the Secretary of the military department concerned may prescribe, to receive evidence and make findings and recommendations whether an officer who is required to show cause for retention under section 1181 of this title should be retained on active duty.

“(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

“(c) If a board of inquiry determines that the officer has failed to establish that he should be retained, it shall send the record of its proceedings to a board of review.

“(d) If a board of inquiry determines that the officer has established that he should be retained, his case is closed. However, at any time after one year from the date of that

determination, an officer who is required to show cause for retention under section 1181 of this title may again be required to show cause for retention.

“§ 1184. Boards of review: composition; duties

“(a) Boards of review, each composed of three or more officers shall be convened by the Secretary of the military department concerned, at such times as he may prescribe, to review the records of cases of regular commissioned or warrant officers recommended for removal by a board of inquiry under section 1183 of this title. If after reviewing the record of the case, a board of review determines that the officer—

“(1) has failed to establish that he should be retained, it shall send its recommendation to the Secretary for his action; or

“(2) has established that he should be retained on active duty, his case is closed; however, at any time after one year from the date of that determination, he may be again required to show cause for retention in those cases reviewed under section 1181 of this title.

“(b) Boards of review shall be convened in accordance with section 1161(e) of this title to review the proceedings of a board of officers convened under section 1161 of this title in which that board has recommended the removal of a regular commissioned or warrant officer from active duty. It shall send its recommendation to the Secretary of the military department concerned for his action.

“§ 1185. Removal of officer: action by Secretary upon recommendation

“The Secretary of the military department concerned may remove an officer from active duty in the regular component of an armed force if his removal is recommended by a board of review under this chapter. The Secretary’s action in such a case is final and conclusive.

“§ 1186. Rights and procedures

Each officer under consideration for removal by a board convened under section 1183 of this title shall be—

“(1) notified in writing of the reasons, at least thirty days before the hearing of the case by a board of inquiry, for which the officer is being required to show cause for retention;

“(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the military department concerned, to prepare his defense;

“(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

“(4) allowed full access to, and furnished copies of, records relevant to the case at all states of the proceedings.

“§ 1187. Officer considered for removal: voluntary retirement or discharge; severance benefits

“(a) At any time during proceedings under this chapter and before the removal of an officer, the Secretary of the military department concerned may grant a request—

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“(1) for voluntary retirement, if the officer is otherwise qualified therefor;

“(2) for honorable discharge under subsection (b) in those cases brought under section 1181 of this title; or

“(3) for discharge under subsection (b) in those cases brought under section 1182 of this title.

“(b) Each officer removed from active duty or a regular component of the armed forces under this chapter shall—

“(1) if he is eligible for voluntary retirement under any law on the date of his removal, be retired in the grade and with the pay for which he would be eligible if retired at his request;

“(2) if he is ineligible for voluntary retirement under any law on the date of his removal, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned or warrant service, as the case may be, but not more than twelve, by one month's basic pay of that grade in those cases brought under section 1181 of this title; or

“(3) if on that date the officer is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned or warrant service, as the case may be, but not more than

twelve, by one month's basic pay of that grade in those cases brought under section 1182 of this title.

“§ 1188. Officers eligible to serve on boards

“(a) No officer may serve on a board under this chapter unless, with respect to the Army and Air Force, he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board. No officer may serve on a board under this chapter unless, with respect to the Navy and Marine Corps, he is serving in a grade above commander in the Navy or lieutenant colonel in the Marine Corps, and is senior in grade to any officer considered by that board.

“(b) No person may be a member of more than one board convened under this chapter for the same officer.”

(4) Subtitle B is amended by repealing chapters 359 and 360.

* * * * *

**Chapter 359.—SEPARATION FROM REGULAR
ARMY FOR SUBSTANDARD PERFORMANCE
OF DUTY**

Sec.

3781. Selection boards: composition; duties.

3782. Boards of inquiry: composition; duties.

3783. Boards of review: composition; duties.

3784. Removal of officer; action by Secretary of the Army upon recommendation.

3785. Rights and procedures.

3786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits.

3787. Officers eligible to serve on boards.

§ 3781. Selection boards: composition; duties

The Secretary of the Army may at any time convene a board of officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he shall be required, because his performance of duty has fallen below standards prescribed by the Secretary, to show cause for his retention on the active list.

§ 3782. Boards of inquiry: composition; duties

(a) Boards of inquiry, each composed of three or more officers, shall be convened, at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3781 of this title, shall be retained on the active list of the Regular Army.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 3781 of this title.

§ 3783. Boards of review: composition; duties

(a) Boards of review, each composed of three or more officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Army under section 3782 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 3781 of this title.

§ 3784. Removal of officer: action by Secretary of the Army upon recommendation

The Secretary of the Army may remove an officer from the active list of the Regular Army if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive.

§ 3785. Rights and procedures

Each officer under consideration for removal from the active list of the Regular Army under this chapter shall be—

- (1) notified in writing, at least 30 days before the hearing of his case by a board of inquiry, that he is

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being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Army, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceedings.

§ 3786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Army, the Secretary of the Army may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for honorable discharge with severance benefits under subsection (b).

(b) Each officer removed from the active list of the Regular Army under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

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(2) if on that date he is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b) (2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

§ 3787. Officers eligible to serve on boards

(a) No officer may serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer.

Chapter 360.—SEPARATION FROM REGULAR ARMY FOR MORAL OR PROFESSIONAL DERELICTION OR IN INTERESTS OF NATIONAL SECURITY

Sec.

3791. Selection boards: composition; duties.

3792. Boards of inquiry: composition; duties.

3793. Boards of review: composition; duties.

3794. Removal of officer; action by Secretary of the Army upon recommendation.

3795. Rights and procedures.

3796. Officers considered for removal: retirement or discharge.

3797. Officers eligible to serve on boards.

§ 3791. Selection boards: composition; duties

The Secretary of the Army may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Army to determine whether he shall be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on the active list.

§ 3792. Boards of inquiry: composition; duties

(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Army may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3791 of this title, shall be retained on the active list of the Regular Army.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be

again required to show cause for retention under section 3791 of this title.

§ 3793. Boards of review: composition; duties

(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Army, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Army under section 3792 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 3791 of this title.

§ 3794. Removal of officer: action by Secretary of the Army upon recommendation

The Secretary of the Army may remove an officer from the active list of the Regular Army if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive.

§ 3795. Rights and procedures

Each officer under consideration for removal from the active list of the Regular Army under this chapter shall be—

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(1) notified in writing of the charges against him, at least 30 days before the hearing of his case by a board of inquiry, for which he is being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Army, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interests of national security.

In any case where any records are withheld under clause (4), the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld.

§ 3796. Officers considered for removal: retirement or discharge

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Army, the Secretary of the Army may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for discharge under subsection (b).

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(b) Each officer removed from the active list of the Regular Army under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

(2) if on that date he is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b) (2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

§ 3797. Officers eligible to serve on boards

(a) No officer may serve on a board under this chapter unless he is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer.

EXISTING LAW

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Subtitle B.—Army

PART I.—ORGANIZATION

* * * *

PART II.—PERSONNEL

Chap.	Sec.
331. Strength	3201
333. Enlistments	3251
335. Appointments in the Regular Army	3281
337. Appointments as Reserve Officers	3351
339. Temporary Appointments	3441
341. Active Duty	3491
343. Special Appointments, Assignments, Details, and Duties	3531
345. Rank and Command	3571
349. Miscellaneous Prohibitions and Penalties	3631
353. Miscellaneous Rights and Benefits	3681
355. Hospitalization	3721
357. Decorations and Awards	3741
359. Separation from Regular Army for Substandard Performance of Duty	3781
360. Separation from Regular Army for Moral or Professional Dereliction or in Interests of National Security	3791
361. Separation for Various Reasons	3811
363. Separation or Transfer to Retired Reserve	3841
365. Retirement for Age	3881
367. Retirement for Length of Service	3911
369. Retired Grade	3961
371. Computation of Retired Pay	3991
373. Civilian Employees	4021

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(5) The chapter analysis of subtitle B and the chapter analysis of part II of subtitle B are each amended by striking out the items relating to chapters 359 and 360.

PART II.—PERSONNEL

Chap.	Sec.
331. Strength	3201
333. Enlistments	3251
335. Appointments in the Regular Army	3281
337. Appointments as Reserve Officers	3351
339. Temporary Appointments	3441
341. Active Duty	3491
343. Special Appointments, Assignments, Details, and Duties	3531
345. Rank and Command	3571
349. Miscellaneous Prohibitions and Penalties	3631
353. Miscellaneous Rights and Benefits	3681
355. Hospitalization	3721
357. Decorations and Awards	3741
359. Separation from Regular Army for Substandard Per- formance of Duty	3781
360. Separation from Regular Army for Moral or Profes- sional Dereliction or in Interests of National Security	3791
361. Separation for Various Reasons	3811
363. Separation or Transfer to Retired Reserve	3841
365. Retirement for Age	3881
367. Retirement for Length of Service	3911
369. Retired Grade	3961
371. Computation of Retired Pay	3991
373. Civilian Employees	4021

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**Chapter 859.—SEPARATION FROM REGULAR AIR
FORCE FOR SUBSTANDARD PERFORMANCE
OF DUTY**

Sec.

- 8781. Selection boards: composition; duties.
- 8782. Boards of inquiry: composition; duties.
- 8783. Boards of review: composition; duties.
- 8784. Removal of officer: action by Secretary of the Air Force upon recommendation.
- 8785. Rights and procedures.
- 8786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits.
- 8787. Officers eligible to serve on boards.

§ 8781. Selection boards: composition; duties

The Secretary of the Air Force may at any time convene a board of officers to review the record of any commissioned officer on the active list of the Regular Air Force to determine whether he shall be required, because his performance of duty has fallen below standards prescribed by the Secretary, to show cause for his retention on the active list.

§ 8782. Boards of inquiry: composition; duties

(a) Boards of inquiry, each composed of three or more officers, shall be convened, at such places as the Secretary of the Air Force may prescribe, to receive evidence and

(6) Subtitle D is amended by repealing chapters 859 and 860.

make findings and recommendations whether an officer, required to show cause under section 8781 of this title, shall be retained on the active list of the Regular Air Force.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 8781 of this title.

§ 8783. Boards of review: composition; duties

(a) Boards of review, each composed of three or more officers, shall be convened by the Secretary of the Air Force, at such times as he may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Air Force under section 8782 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed.

However, at any time after one year from the date of that determination, he may be again required to show cause for retention under section 8781 of this title.

§ 8784. Removal of officer: action by Secretary of the Air Force upon recommendation

The Secretary of the Air Force may remove an officer from the active list of the Regular Air Force if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive.

§ 8785. Rights and procedures

Each officer under consideration for removal from the active list of the Regular Air Force under this chapter shall be—

(1) notified in writing, at least 30 days before the hearing of his case by a board of inquiry, that he is being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Air Force, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding.

§ 8786. Officer considered for removal: voluntary retirement or honorable discharge; severance benefits

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Air Force, the Secretary of the Air Force may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for honorable discharge with severance benefits under subsection (b).

(b) Each officer removed from the active list of the Regular Air Force under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

(2) if on that date he is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b) (2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

§ 8787. Officers eligible to serve on boards

(a) No officer may serve on a board under this charter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer.

Chapter 860.—SEPARATION FROM REGULAR AIR FORCE FOR MORAL OR PROFESSIONAL DERELICTION OR IN INTERESTS OF NATIONAL SECURITY

Sec.

8791. Selection boards: composition; duties.

8792. Boards of inquiry: composition; duties.

8793. Boards of review: composition; duties.

8794. Removal of officer: action by Secretary of the Air Force upon recommendation.

8795. Rights and procedures.

8796. Officers considered for removal: retirement or discharge.

8797. Officers eligible to serve on boards.

§ 8791. Selection boards: composition; duties

The Secretary of the Air Force may at any time convene a board of general officers to review the record of any commissioned officer on the active list of the Regular Air Force to determine whether he shall be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on the active list.

§ 8792. Boards of inquiry: composition; duties

(a) Boards of inquiry, each composed of three or more general officers, shall be convened at such places as the Secretary of the Air Force may prescribe, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 8791 of this title, shall be retained on the active list of the Regular Air Force.

(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on the active list, it shall send the record of its proceedings to a board of review.

(d) If a board of inquiry determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 8791 of this title.

§ 8793. Boards of review: composition; duties

(a) Boards of review, each composed of three or more general officers, shall be convened by the Secretary of the Air Force, at such times as he may prescribe to review the records of cases of officers recommended by boards of inquiry for removal from the active list of the Regular Air Force under section 8792 of this title.

(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish

that he should be retained on the active list, it shall send its recommendation to the Secretary for his action.

(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on the active list, his case is closed. However, at any future time, he may be again required to show cause for retention under section 8791 of this title.

§ 8794. Removal of officer: action by Secretary of the Air Force upon recommendation

The Secretary of the Air Force may remove an officer from the active list of the Regular Air Force if his removal is recommended by a board of review under this chapter. The Secretary's action in such a case is final and conclusive. (Added Pub. L. 86-616, § 8(a), July 12, 1960, 74 Stat. 394.)

§ 8795. Rights and procedures

Each officer under consideration for removal from the active list of the Regular Air Force under this chapter shall be—

(1) notified in writing of the charges against him, at least 30 days before the hearing of his case by a board of inquiry, for which he is being required to show cause for retention on the active list;

(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary of the Air Force, to prepare his defense;

(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

(4) allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interest of national security.

In any case where any records are withheld under clause (4), the officer whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld.

§ 8796. Officers considered for removal: retirement or discharge

(a) At any time during proceedings under this chapter and before the removal of an officer from the active list of the Regular Air Force, the Secretary of the Air Force may grant his request—

(1) for voluntary retirement, if he is otherwise qualified therefor; or

(2) for discharge under subsection (b).

(b) Each officer removed from the active list of the Regular Air Force under this chapter shall—

(1) if on the date of removal he is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

(2) if on that date he is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiply-

ing his years of active commissioned service, but not more than 12, by one month's basic pay of that grade.

(c) For the purposes of subsection (b) (2), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

§ 8797. Officers eligible to serve on boards

(a) No officer may serve on a board under this chapter unless he is senior in regular grade to, and outranks, any officer considered by that board.

(b) No person may be a member of more than one board convened under this chapter for the same officer.

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Subtitle D.—Air Force

PART I.—ORGANIZATION

Chap.

Sec.

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PART II.—PERSONNEL

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837. Appointments as Reserve Officers.....	8351
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(7) The chapter analysis for subtitle D and the chapter analysis of part II of subtitle D are each amended by striking out the items relating to chapters 859 and 860.

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EXISTING LAW

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THE BILL AS REPORTED

SEC. 2. Notwithstanding any other provision of law, the separation of any commissioned or warrant officer of the Coast Guard under clause (2) of section 321 of title 14, United States Code, shall be in accordance the applicable procedures and safeguards set forth in section 1 of this Act.

SEC. 3. This Act shall become effective on the first day of the sixth month following the month in which it is enacted.

SUMMARY

The purpose of this proposed legislation is to uniformly control the administrative separation of members of the armed forces under conditions other than honorable through statutory provisions including quasi-judicial board hearings, rights to counsel, subpoena power, confrontation, and the right to appearance, among other features. In addition, the proposed legislation places statutory limitations on the circumstances under which an individual may receive an administrative discharge under other than honorable conditions without the benefit of board proceedings.

Cost

Any increased cost would be absorbed within the present budget.

Departmental Position

The Department of Defense favors enactment of the proposed legislation and the Bureau of Management and Budget offered no objection.

Committee Position

The Committee on Armed Services, a quorum being present, unanimously recommends enactment of the bill without amendment.





